APPENDIX A

UNITED STATES DISTRICT COURT,
N.D. ILLINOIS, WESTERN DIVISION.

No. 01 C 50229, 01 C 6566.

DAVID WINTERS, PATRICIA REID LINDNER, J. BRADLEY BURZYNSKI, YOLANDA CAMPUZANO, ARMANDO CARDENAS, GUADALUPE GARCIA, and WILLIE JORDAN, JR., registered voters and Illinois citizens,

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS and RONALD D. MICHAELSON, in his capacity as EXECUTIVE DIRECTOR of the ILLINOIS STATE BOARD OF ELECTIONS,

Defendants.

BEN BARNOW, individually as a registered voter,

Plaintiff,

v.

JIM RYAN, in his official capacity as the ILLINOIS ATTORNEY GENERAL, JESSE WHITE, in his official capacity as the ILLINOIS SECRETARY of STATE, the STATE BOARD OF ELECTIONS and its members, JOHN R. KEITH, WILLIAM M. MCGUFFAGE, DAVID E. MURRAY, PHILIP R. O'CONNOR, ALBERT PORTER, ELAINE ROUPAS, WANDA L. REDNOUR, and JESSE SMART, all named in their official capacities, the ILLINOIS LEGISLATIVE REDISTRICTING COMMISSION and its members, TOM CROSS, BARBARA FLYNN CURRIE, VINCE DEMUZIO, WALTER DUDYCZ, RAYMOND EWELL, THOMAS MARCUCCI, THOMAS MCCRACKEN, and JORGE RAMIREZ, all named in their official capacities,

Defendants.

Nov. 20, 2001

MEMORANDUM OPINION AND ORDER

KANNE, *Circuit J.*

On September 28, 2001, this court heard consolidated oral argument in the above two cases. That same day, due to impending deadlines imposed by the Illinois Constitution and the necessity of an immediate decision, the court announced its decision from the bench and entered orders disposing of both cases with a written opinion to follow in due course. This is that opinion.[1]

I. INTRODUCTION

On August 20, 2001, plaintiffs in Case No. 01 C 50229 (collectively referred to as "the *Winters* plaintiffs") filed a first-amended complaint against defendants, the Illinois State Board of Elections and Ronald D. Michaelson, in his capacity as the Executive Director of the Illinois State Board of Elections. The court has since granted leave to the following parties to intervene in the *Winters* action: John Tully, intervening as a defendant, James "Pate" Philip and Lee A. Daniels (collectively referred to as "the Philip intervenors"), intervening as plaintiffs, and the League of United Latin American Citizens ("LULAC"), intervening as a plaintiff.

Meanwhile, plaintiff in Case No. 01 C 6566, Ben Barnow, originally filed his two-count complaint against defendants,[2] Jim Ryan, in his official capacity as the Illinois Attorney General, Jesse White, in his official capacity as the Illinois Secretary of State, the State Board of Elections and its members, all in their official capacities, and the Illinois Legislative Redistricting Commission and its members, all in

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[1] Just as it did for oral argument, the court has consolidated these nearly identical cases for purposes of this opinion.

[2] Unless otherwise noted, the court will collectively refer to all of the original defendants in both the *Winters* and *Barnow* cases as, simply, "defendants."

their official capacities, with the Illinois Supreme Court on August 17, 2001. The Attorney General, acting on behalf of the Barnow defendants, subsequently removed the *Barnow* case to the Northern District of Illinois under 28 U.S.C. § 1441(a), on the basis of federal question jurisdiction, *see id.* § 1331.

Because the *Winters* and *Barnow* complaints each challenge the constitutionality of Illinois' reapportionment and legislative redistricting process, this three-judge court was convened pursuant to 28 U.S.C. § 2284 and assigned to both cases. Jurisdiction and venue for the cases are proper in this district and division under 28 U.S.C. § § 1331, 1367, 1391.

II. BACKGROUND

Article IV, § 3(b) of the Illinois Constitution sets forth the manner in which the State of Illinois reapportions its legislative and representative districts. If the Illinois General Assembly is unable to agree on a redistricting plan, the task is charged to a Legislative Redistricting Commission ("the Commission"). The Commission is initially composed of eight members, no more than four of whom may be members of the same political party. Should the eight-member Commission deadlock and fail to approve a redistricting plan by majority vote before August 10, a ninth, tie-breaking member is appointed. To choose the ninth member, article IV, § 3(b) directs the Illinois Supreme Court to submit the names of two persons, not of the same political party, to the Secretary of State. The Secretary of State is then called upon to publicly "draw by random selection" the name of one of the two persons, who then becomes the ninth Commission member.

It is this so-called "tie-breaking provision," requiring the ninth Commission member to be picked at random, that precipitated the *Winters* plaintiffs and Barnow to file suit. They, along with the Philip intervenors, urge the court to

declare that the tie-breaking provision of article IV, § 3(b) of the Illinois Constitution violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. Opposing them are defendants and Tully, who seek to uphold the constitutionality of the tie-breaking provision. At the court's request, all of the parties (except LULAC, which affirmatively disclaimed any interest in doing so) submitted cross-motions for judgment on the pleadings regarding this and other specified issues, pursuant to Federal Rule of Civil Procedure 12(c). As it turns out, only the question of whether the tie-breaking provision violates the Fourteenth Amendment requires the court's attention in this opinion.

III. ANALYSIS

A. *Judgment on the Pleadings*

A motion for judgment on the pleadings under Rule 12(c) is treated the same as one to dismiss for failure to state a claim under Rule 12(b)(6): the court accepts as true all well-pleaded allegations in the complaint and draws all reasonable inferences there from in favor of the plaintiffs. *See Forseth v. Village of Sussex,* 199 F.3d 363, 368 & n. 6 (7th Cir.2000). A Rule 12(c) motion will be granted only if it appears beyond doubt that the plaintiffs cannot prove any facts that would support a claim for relief. *See id.* at 368.

The Winters plaintiffs and Philip intervenors (who filed a joint motion) suggest theirs is "essentially a motion for summary judgment," but this apparently assumes the court will consider the voluminous exhibits they have attached to their motion and response brief. However, the vast majority of materials they have tried to introduce are simply irrelevant to the court's decision. Indeed, the court wishes to make clear the only documents outside the pleadings it has considered are the verbatim transcripts from the Sixth Illinois Constitutional Convention—an item the court may properly

take judicial notice of as a matter of public record without converting the motions for judgment on the pleadings into ones for summary judgment. *See Anderson v. Simon*, 217 F.3d 472, 474-75 (7th Cir.2000), *cert. denied*, 531 U.S. 1073 (2001); *United States v. Wood*, 925 F.2d 1580, 1582 (7th Cir.1991). All other documents, exhibits, and materials attached to the parties' briefs and motions are stricken.

B. *Substantive Due Process*

Although the *Winters* and *Barnow* complaints challenge the tie-breaking provision on various grounds, the court believes the proper analysis is based on substantive due process. The first problem this poses is which standard of review the court should apply—strict scrutiny, rational basis, or something in between? All the parties seem to agree some form of rational basis review is appropriate, but it is less clear why that is so.

Defendants believe the Supreme Court's election law and voting rights cases provide the proper framework for evaluating the tie-breaking provision. In recent years, the Supreme Court has backed off somewhat from its strict categorical approach to the-right to vote. *Compare Reynolds v. Sims*, 377 U.S. 533, 554-55, 562 (1964) (right to vote is fundamental and any alleged infringement on right to vote must be "carefully and meticulously scrutinized"), *and Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (right to vote is a fundamental right subject to strict scrutiny), *with Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 9 (1982) (right to vote *per se* is not a constitutionally protected right), *and Burdick v. Takushi*, 504 U.S. 428, 432-33 (1992) (right to vote in any manner through the ballot is not absolute and law imposing burden on right to vote is not necessarily subject to strict scrutiny). It now uses a "more flexible standard" when a state election law impacts the right to vote, adjusting the rigorousness of the inquiry depending on the extent to which

the challenged regulation burdens Fourteenth Amendment rights. *See Burdick,* 504 U.S. at 434. Under *Burdick,* defendants suggest strict scrutiny is inappropriate because Illinois' tie-breaking provision does not subject the rights of Illinois voters to "severe" voting restrictions. *See id.* In fact, according to defendants, the tie-breaking provision does not affect a voter's access to the ballot, access to the polls, or burden a person's voting rights in any other way. If anything, they say, the random selection of a ninth Commission member imposes nothing more than a "reasonable, nondiscriminatory restriction" on the right to vote, thus calling for rational basis review. *See id.*

The court, however, need not ultimately decide how the tie-breaking provision would fare under *Burdick,* as it will instead apply the Supreme Court's more generic substantive due process analysis. This too, it should be noted, points to a rational basis test.

If a piece of legislation does not burden a fundamental right, substantive due process requires only that it be rationally related—in other words, that it not be completely arbitrary and lacking any connection—to a legitimate government interest. *See Washington v. Glucksberg,* 521 U.S. 702, 728 (1997); *Turner v. Glickman,* 207 F.3d 419, 426 (7th Cir.2000). Whether a "fundamental right" is involved in the first place demands a "careful description" or formulation of the asserted fundamental liberty interest. *Glucksberg,* 521 U.S. at 721, 722. This means the liberty interest at issue must be defined in concrete, specific terms, not abstract generalizations. *See id.* at 722; *Khan v. Gallitano,* 180 F.3d 829, 833-34 (7th Cir.1999).

One possibility here is to define the liberty interest at stake more broadly so as to implicate the right to vote. By determining who becomes the ninth Commission member, who in turn will likely cast the deciding vote on which reapportionment map the Commission will approve, the tie-

breaking provision undeniably has some indirect effect, down the road at least, on a person's right to vote. But interpreting the tie-breaking provision as falling under the umbrella of the right to vote in this way is premised on a much more abstract notion of that right than the Supreme Court's substantive due process jurisprudence allows. Rather, the specific question before the court in the present cases is more narrowly framed as: "Is there a fundamental right to have the tie-breaking member of a redistricting commission chosen by some means other than by lot?" *Cf. Glucksberg,* 521 U.S. at 722-23 (issue was not whether there is fundamental right to die, but whether there is "right to commit suicide which itself includes a right to assistance in doing so"); *Khan,* 180 F.3d at 833-34 (fundamental right was not the general or broad right to contract, but the "right to be free from state officials tortiously interfering with one's existing contractual relationships"). The answer to that is obviously, "Of course not," and nobody suggests otherwise. As no other fundamental right is arguably implicated, the court will apply the "highly deferential" rational basis review. *Turner,* 207 F.3d at 426.

No one seriously doubts the State of Illinois has a legitimate interest in legislative redistricting. The Supreme Court has repeatedly emphasized the primary responsibility for legislative and congressional reapportionment lies with the States. *See Growe v. Emison,* 507 U.S. 25, 33-34 (1993); *Miller v. Johnson,* 515 U.S. 900, 915 (1995). And, in this court's opinion, the tie-breaking provision is rationally related to that interest.

Given the politically sensitive nature of the ninth Commission member's position in Illinois' redistricting scheme, it would seem, at first blush anyway, picking that member's name out of a hat is anything but rational. But the delegates at the 1970 Illinois Constitutional Convention—whence the tie- breaking provision came—had their reasons.

Specifically, they believed it would give both political parties an incentive to compromise because neither side would want to risk losing the random drawing. As one delegate explained:

> The object of the reapportionment plan . . . is to reduce both political parties to a state of equivalency. We believe we achieve this by utilizing the random selection method of achieving a tie-breaker, whereby neither party could look ahead with certainty as to a potentional [sic] tie-breaker being more in line with their opinions than with the other party's opinions.
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> [W]e believe we have adopted the most sensible [tie-breaker reapportionment scheme] in that it does not at any stage give the impetus to one party or the other to stalemate, because it can look to the tie-breaker system and figure out that it might have a better advantage further down the road.

IV RECORDS OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, at 2955, 2956 (July 21, 1970) (statements of Del. Sommerschield). This justification for the random selection of the tie-breaking Commission member—to act as a catalyst for bipartisan cooperation during reapportionment—is perfectly reasonable, or at least not so totally unreasonable that it fails the rational basis test.

In some respects, it may even be more rational than the procedures found in other states. For example, in four states where a redistricting commission is used, the tie-breaking member is chosen by either a majority of the state's Supreme Court or the Chief Justice of the state Supreme Court. *See* Alaska Const. art. VI, § 8; Mont. Const. art. V, § 14(2); N.J. Const. art. IV, § 3, ¶ 2; Pa. Const. art. II, § 17(b). As a result, the commission members in these states who may be

affiliated with the same political party as the state Supreme Court's majority or its Chief Justice may have no incentive to compromise because they can safely assume the tie-breaker will end up in their favor.

The delegates of the 1970 Illinois Constitutional Convention reasonably thought they could avoid this problem with the use of a random drawing. Unfortunately, as it turned out, they were wrong, and the Winters plaintiffs and Philip intervenors spend a great deal of time trying to prove just how wrong they were by recounting the rather ignominious past of the tie-breaking provision and the sharp criticism it has received over the years. History proves it has had just the opposite of its desired effect. Rather than forcing the parties to find common ground for fear of losing the random drawing, they are apparently willing to dig in their heels with the hope of *winning* the drawing. In fact, the Commission has resorted to the tie-breaking provision in each of the last three rounds of reapportionment in Illinois. (Winters Am. Compl. ¶¶ 32-34; Barnow Compl. ¶¶ 49-59) Accepting them as true, these arguments illustrate well that the tie-breaking provision has not done what it was supposed to do: prevent deadlock in the Commission. The Winters plaintiffs and Philip intervenors also point out that Illinois, in choosing the tie-breaking member by lot, is unique among states with redistricting commissions. (Winters Pls. & Philip Intervenors Mem. in Supp. of Mot. for J. on the Pleadings, Exh. E) So what does all this mean? In terms of substantive due process analysis, not much.

"It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory," *Reeves, Inc. v. Stake*, 447 U.S. 429, 441 (1980) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)), to conduct novel experiments in the "science of government" and test solutions to difficult problems of policy; such a state is given broad

latitude, its decisions subject only to the minimum requirements of the Fourteenth Amendment that they not be arbitrary, capricious, or unreasonable. *See Smith v. Robbins,* 528 U.S. 259, 273-75 (2000); *Garcia v. San Antonio Metro. Transit Auth.,* 469 U.S. 528, 546 (1985) (quoting *Anderson v. Dunn,* 5 L.Ed. 242, 247 (1821)); *Chandler v. Florida,* 449 U.S. 560, 579 (1981) (quoting *Liebmann,* 285 U.S. at 311 (Brandeis, J., dissenting)); *Whalen v. Roe,* 429 U.S. 589, 597 (1977). Perhaps the *Winters* plaintiffs and Philip intervenors are right that Illinois' experiment to choose the tie-breaking Commission member by chance has been a real-world failure. But that need not concern this court. Reapportionment is, without question, a thorny issue of public policy, one where a state deserves plenty of leeway to experiment and, sometimes, make mistakes. *See Growe,* 507 U.S. at 34; *cf. Rodriguez,* 457 U.S. at 8 (methods used by Puerto Rico to structure its electoral system given "substantial deference"). What matters for present purposes is whether the idea behind the tie-breaking-by-lot experiment makes a reasonable amount of sense. As explained above, it does, and not even the Winters plaintiffs and Philip intervenors seriously dispute this. Because the tie-breaking provision is rationally related to Illinois' significant interest in the reapportionment process, the court finds it does not violate the substantive component of the Due Process Clause.

This is so despite Justice Bilandic's dissenting opinion in *People ex rel. Burris v. Ryan,* 588 N.E.2d 1033 (Ill.), *cert. denied,* 504 U.S. 973 (1992). Justice Bilandic argued the tie-breaking provision does not comply with due process because it arbitrarily establishes legislative districts, which in turn impacts "the rights of Illinois citizens to participate on a fair and equal basis in the electoral process." *Burris,* 588 N.E.2d at 1042 (Bilandic, J., dissenting). In reaching this conclusion, he relied heavily on *Walker v. State Board of Elections,* 359 N.E.2d 113 (Ill.1976), where the Illinois Supreme Court addressed a section of the Illinois Election Code providing for

the disqualification of a single member of the State Board of Elections in the case of a deadlock, with the member's name drawn by lot. The court struck down this section on two grounds: (1) it violated due process because it caused decisions to be arrived at in an arbitrary manner and left the ultimate outcome to chance; and (2) it violated article III, § 5 of the Illinois Constitution, which prohibits any political party from having a majority on the Board. *See id.* at 123.

This court finds Justice Bilandic's dissent in *Burris* unpersuasive and the majority opinion in *Walker* distinguishable for various reasons. First, Justice Bilandic seemed to assume without discussion the tie-breaking provision of article IV, § 3(b) could be subsumed under the broader fundamental right to vote for substantive due process analysis—a notion this court has explicitly rejected earlier in this opinion. More importantly, he did not analyze the crucial question of whether the rationale behind that provision could save it from a due process attack. As for *Walker,* the tie-breaking provision in that case involved the random *disqualification* of a board member, so as to *prevent* a duly-appointed state constitutional officer from casting his or her vote. In contrast, the tie-breaking provision at issue here calls for the random *addition* of another Commission member, so it does not affect the ability of the other eight Commission members to cast their votes. The holding in *Walker* also depended in part on a separate section in the Illinois Constitution that specifically prohibited a political party from having a majority on the State Board of Elections. No similar provision exists with respect to the composition of the Legislative Redistricting Commission. Finally, and, once again, most critically, the majority in *Walker* never considered any redeeming, legitimate legislative purpose for the Election Code's tie-breaking provision. Perhaps its silence on the issue is meant to imply it could find no such purpose. In any event, the justification for the tie-breaking provision of article IV,

§ 3(b), as articulated in the debates of the 1970 Illinois Constitutional Convention, is more than sufficient to pass rational basis review.

C. *Procedural Due Process*

In their joint response brief, the *Winters* plaintiffs and Philip intervenors try to frame the constitutionality of the tie-breaking provision in terms of procedural due process. When a state deprives an individual of a protected liberty or property interest, procedural due process generally guarantees the right to fair procedures, such as adequate notice, an opportunity to be heard, and an impartial decision maker. *See Head v. Chicago Sch. Reform Bd. of Tr.*, 225 F.3d 794, 803-04 (7th Cir.2000). The court fails to see how the tie-breaking provision implicates these concerns. In the first place, the *Winters* plaintiffs and Philip intervenors have never suggested what liberty or property interest the tie-breaking provision supposedly deprived them of. And while the manner of selecting the ninth Commission member may indeed be arbitrary, based as it is on chance (although the court stresses again the idea behind it is *not* arbitrary), this is a separate and distinct issue from whether the procedures used and decisions reached by the Commission are themselves arbitrary or unfair. Procedural due process is concerned with the latter, not the former.

Apparently recognizing this, the Winters plaintiffs and Philip intervenors claim the Commission, with the Democrats gaining control after this year's tie-breaker, has rode roughshod over the Republican minority and ignored all sorts of procedural requirements and internal rules, leading to a final reapportionment map that is the product of a hurried and one-sided decision-making process. However, this is not what the *Winters* and *Barnow* complaints allege and is not what these cases are about. The *Winters* plaintiffs and Philip intervenors proved this very point when they moved to amend the *Winters* complaint to add these new allegations on the day

of oral argument (a motion the court has already denied). In fact, similar allegations form part of an entirely new law suit filed in this court on October 12, 2001, in which the plaintiffs are represented by the same attorneys representing the Winters plaintiffs and Philip intervenors. *See Campuzano v. Illinois State Boardof Elections,* No. 01 C 50376. Therefore, the court considers the procedural due process argument a non-issue and need address it no further.

D. *Equal Protection*

In rather summary fashion, the *Winters* plaintiffs and Philip intervenors challenge the tie-breaking provision on equal protection grounds. This argument also merits little discussion. Put simply, the Equal Protection Clause does not apply in the first instance because the tie-breaking provision does not create any sort of classification whatsoever. Instead, it treats both political parties exactly the same and singles neither party out for disparate treatment. The two candidates chosen by the Supreme Court to be used in the drawing may not be of the same political party and each candidate's name is thrown into the hat only once, so each party stands an equal chance of winning (or losing) the drawing. As a result, the tie-breaking provision does not fall disproportionately on any discrete political party or otherwise afford unequal treatment to different political parties. *See Rodriguez,* 457 U.S. at 10, 12; *cf. Weisberg v. Powell,* 417 F.2d 388, 394 (7th Cir.1969) (requiring selection by lot to determine the order of placing names on a ballot to *avoid* equal protection violation); *Mann v. Powell,* 333 F.Supp. 1261, 1267 (N.D.Ill.1969) (same).

IV. CONCLUSION

For the reasons stated above, the court finds the tie-breaking provision of article IV, § 3(b) of the Illinois Constitution does not violate the Due Process or Equal Protection Clauses of the Fourteenth Amendment of the

United States Constitution. It accordingly grants the motions for judgment on the pleadings by defendants in the *Winters* and *Barnow* cases and defendant-intervenor Tully, and denies the motions for judgment on the pleadings by the Winters plaintiffs and Philip intervenors and Barnow. This also means, as noted in the court's oral ruling and previous minute orders, all other issues and claims raised by the parties in these cases are rendered moot.

APPENDIX B

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS

[Filed Oct 10, 2001]

Case No. 01 C 50229

WINTERS, *et al.*,

v.

ILLINOIS STATE BOARD OF ELECTIONS, *et al.*,

MOTION

Motion by plaintiffs WINTERS *et al.* and plaintiff-intervenors PHILIP *et al.* for leave to file second-amended complaint and to alter or amend the judgment under Rule 59(e).

DOCKET ENTRY

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on ____ set for ____ at ____.

(5) ☐ Status hearing [held/continued to] [set for/re-set for] on ____ set for ____ at ____.

(6) ☐ Pretrial conference [held/continued to] [set for/re-set for] on ____ set for ____ at ____.

(7) ☐ Trial [set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to ____ at ____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs [by/agreement/pursuant to] ☐FRCP4(m) ☐General Rule 21 ☐FRCP41(a)(1) ☐FRCP41(a)(2).

(10) ■ [Other docket entry] For the reasons stated on the reverse Memorandum Opinion and Order, the motions by plaintiffs Winters *et al.* and plaintiffs-intervenors Philip *et al.* to file an amended complaint under Rule 15(a) and to alter or amend the judgment under Rule 59(e) are denied.

(11) ■ [For further detail see order in the reverse side of the original minute order.]

MEMORANDUM OPINION AND ORDER

On September 28, 2001, plaintiffs Winters *et al.* and plaintiff-intervenors Philip *et al.* (collectively referred to as "plaintiffs") filed a motion for leave to file a second-amended complaint under Federal Rule of Civil Procedure 15(a). On October 9, 2001, the court received separate responses to this motion by defendant-intervenor Tully and the League of United Latin American Citizens. Plaintiffs' motion for leave to file an amended complaint is denied because the case had already been decided on cross-motions for judgment on the pleadings on September 28, 2001, and a final order, dismissing the case in its entirety, entered on October 1, 2001, all prior to plaintiffs presenting their motion to the court on October 3, 2001, under Local Rule 5.3. *See Camp v. Gregory*, 67 F.3d 1286, 1289-90 (7th Cir. 1995) (holding district court loses jurisdiction to entertain motion for leave to amend complaint once final judgment is entered unless plaintiff also moves for relief from judgment), *cert. denied*, 517 U.S. 1244 (1996).

Perhaps recognizing that the proper course for a plaintiff seeking to amend his complaint once judgment has been entered is to first have the judgment reopened under either Rule 59(e) or 60(b), *see Vicom, Inc. v. Harbridge Merch. Serv., Inc.*, 20 F.3d 771, 784-85 (7th Cir. 1994), plaintiffs filed, on October 9, 2001, a motion under Rule 59(e) to alter or amend the judgment. This motion has been noticed for presentment on October 17, 2001. To succeed in a Rule 59(e), the movant must bring to the district court's attention a manifest error of law and fact, or newly discovered evidence. *See Bordelon v. Chicago Sch. Reform Bd. of Tr.*, 233 F.3d 524, 529 (7th Cir. 2000). In this case, plaintiffs claim the purpose of their Rule 59(e) motion is to raise "new allegations based upon newly discovered evidence." (Pl's Mot. to Amend J. ¶ 7) After examining plaintiffs' proposed second-amended complaint, however, it is clear the "newly discovered evidence" plaintiffs point to does not affect the court's decision on the issues already briefed and argued in the cross-motions for judgment on the pleadings. Instead, the "new evidence" is used only for the purpose of adding new and separate claims to the complaint. This, in the court's opinion, does not warrant granting the Rule 59(e) motion.

For the reasons stated above, plaintiffs' motion for leave to file an amended complaint under Rule 15(a) is denied and plaintiff's motion to alter or amend the judgment under Rule 59(e) is also denied.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Western Division

[Filed Oct. 1, 2001]

Case Number 01- C 50229

DAVID WINTERS, *et al.*

v.

ILLINOIS STATE BOARD OF ELECTIONS, *et al.*

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

■ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that judgment on the pleadings is granted on motions by defendant Illinois State Board of Elections, *et al.*, and defendant-intervenor John Tully, and is denied on motions by plaintiff David Winters, *et al.*, and plaintiff-intervenor James "Pate" Philip, *et al.* The tie-breaking provisions of article IV, section 3(b) of the Illinois Constitution is found not violative of the equal protection or due process clauses of the Fourteenth Amendment of the United States Constitution or the due process clause of the Illinois Constitution. All other issues and claims by these parties and intervenor League of United Latin American Citizens are dismissed as moot. Due to the necessity of an immediate decision because of the

ongoing redistricting process by the Illinois Legislative Redistricting Commission, this order is final and appealable today and a written opinion will follow in due course. This case is hereby dismissed.

Michael W. Dobbins,
Clerk of Court

/s/ Susan M. Wessman
SUSAN M. WESSMAN
Deputy Clerk

Date: 10/1/2001

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

[Filed Nov. 27 2001]

Civil Action No. C 50229

DAVID WINTERS, PATRICIA REID LINDNER, J. BRADLEY BURZYNSKI, YOLANDA CAMPUZANO, ARMANDO CADENAS, GUADALUPE GARCIA and WILLIE JORDAN, JR., registered
Plaintiffs,

JAMES 'PATE' PHILIP and LEE A. DANIELS,
Intervenor Plaintiffs,

UNITED LATIN American CITIZENS,
Intervenor Plaintiff,

v.

ILLINOIS STATE BOARD of ELECTIONS and RONALD D. MICHAELSON, in his capacity as Executive Director of the Illinois State Board of Elections,
Defendants,

JOHN F. TULLY, JR.,
Movant.

Judge Michael S. Kanne, Terence T. Evans, and Philip G. Reinhard sitting as a three judge district court pursuant to 28 U.S.C. § 2284(b).

NOTICE OF DIRECT APPEAL
TO THE UNITED STATES SUPREME COURT

NOTICE OF APPEAL

Plaintiffs David Winters, Patricia Reid Lindner, Bradley Burzynski, Yolanda Campuzano, Armando Cardenas, Guadalupe Garcia and Willie Jordan, Jr. (the "Winters Plaintiffs"), and Intervenors James 'Pate' Philip and Lee A. Daniels hereby appeal the judgment of the United States three-judge district court announced from the bench on September 28, 2001 and entered on October 1, 2001.

On September 28, 2001, the three judge-district court issued an oral ruling denying the Motion for Judgement on the Pleading of David Winters *et al.*, and Intervenors James 'Pate' Philip and Lee A. Daniels, and granting judment on the pleading in favor of the Illinois State Board of Elections *et al.*, and Movant John Tully. The judgment was entered on October 1, 2001. The ruling and judgment found the tie-breaker provision of Article IV, Section 3(b) of the Illinois Constitution did not violate the equal protection or due process clauses of the Fourteenth Amendement of the United States Consitiution or the due process clause of the Illinois Constitution. The Winters Plaintiffs and Intervenors Philip and Daniels appeal from this judgment.

This Notice of Appeal is taken under 28 U.S.C. §§ 1253, 2201, and 2284, and under Rule 18 of the United States Supreme Court Rules.

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing Notice of Appeal was served via messenger on the 27th day of November 2001 on the following:

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APPENDIX E

CONSTITUTION OF THE STATE OF ILLINOIS
ARTICLE IV. THE LEGISLATURE

IL CONST Art. 4, § 3

§ 3. Legislative Redistricting

(a) Legislative Districts shall be compact, contiguous and substantially equal in population. Representative Districts shall be compact, contiguous, and substantially equal in population.

(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts.

If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.

The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.

The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
AMENDMENT XIV—CITIZENSHIP; PRIVILEGE AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction therof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned a[illegible]ng the several States according to their respective numb[illegible], counting the whole number of persons in each State, ex[illegible]uding Indians not taxed. But when the right to vote at any electin for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member or any State legislature, or as an exevutive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emacipation of any slave; but all such debts, obligations and claims shall be held illegal and void

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX F

REPORT

of

THE REDISTRICTING PROCESS REVIEW COMMISSION

January 8, 1999

REPORT OF REDISTRICTING PROCESS REVIEW COMMISSION

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I. Executive Summary

The state legislative redistricting provision of the Illinois Constitution of 1970 has not worked as intended. Delegates to the Constitutional Convention believed the threat of random selection of a partisan, tie-breaking member for a redistricting Commission would induce members of the General Assembly to agree on a redistricting map. But in both 1981 and 1991, the process failed to work as intended. The Secretary of State was required to draw (from a hat in 1981 and, in 1991, a crystal bowl) one of two names provided by the state Supreme Court to serve as a partisan tie breaker, to the widespread derision of the media and public, which depicted the process as "democracy by lottery." In addition, the failure of the process has led to lengthy court proceedings, the expenditure of millions of dollars on attorneys and redistricting consultants, and on both occasions has led to a last minute certification of election ballots.

In 1992, Secretary of State George H. Ryan created a Redistricting Process Review Commission, to which he appointed a bipartisan panel of former legislative leaders, academics and civic leaders. The Secretary directed the Commission to report its recommendations prior to the end of his term of office, in January, 1999, so the Report could be considered and acted upon in advance of the redistricting process that follows the decennial census of the Year 2000. Jeffrey R. Ladd, a lawyer and delegate to the Constitutional Convention of 1970, chaired the Commission.

The Commission held hearings throughout the state and developed principles to guide its work. These included the principle that the redistricting process should give the General Assembly the first opportunity to redistrict itself in a timely fashion. If the legislature is unable to adopt redistricting maps, then the subsequent' process should be as non-partisan as possible. In addition, the criteria for redistricting for each district should achieve contiguity, substantial equality of

population, and compactness. In addition, redistricting should reflect appropriate concern for minority representation, and minimize the number of underlying governmental units that are divided among state legislative districts.

After twenty-five meetings of the Commission, which included testimony by leading national experts on redistricting, the Commission has recommended to the Secretary of State a proposal to replace the present procedures with a new section for the Illinois Constitution that would fulfill these principles and criteria, as follow.

Each legislative chamber would be allowed to redistrict itself by resolution adopted in that chamber bar not less than a three-fifths vote. Should one or both chambers fail, then the responsibility for redistricting is transferred to the Illinois State Board of Elections, That board shall select specifications for a computer program that would redistrict the state's population according to prescribed criteria. The General Assembly shall have authority, by resolution of three-fifths of its members, to replace those computer specifications with its own, which would also have to meet the criteria stated in the Constitution. Otherwise, the specifications of the State Board would be applied to a computer program, which would draw separate redistricting plans one for the House of Representatives and one for the Senate—to be certified by the State Board.

This proposal eliminates "democracy by lottery." The proposal also provides the General Assembly the opportunity to redistrict itself removes the executive branch from involvement in the process, and provides a fail-safe mechanism that is scrupulously fair to all the citizens of our state. The Commission encourages members of the General Assembly to give this proposal their full consideration, in hopes that the proposed amendments to the Illinois Constitution will be presented to the voters in the fall election

of 2000 for ratification of this new procedure that would enhance public confidence in our democratic process.

II. Introduction

Redistricting is the process by which legislative boundaries are redrawn every ten years (following the release of the decennial census data) to reflect shifts in the population. The process is supposed to provide for equal representation in the state legislature commensurate with population changes.

Like many states, Illinois has had a long and frustrating experience with redistricting. In 1964 the General Assembly was unable to agree on a redistricting map. The result of the political impasse was that legislators were elected at-large in Illinois. The ballot used in that election became known as the "bed sheet ballot" because of its length.

In the wake of the wide spread public and political dissatisfaction with this process, the Sixth Illinois Constitutional Convention convened. Its members were dedicated to avoiding any further legislative elections on a statewide basis.

The Legislative Committee of the Convention, and most of the Convention delegates believed that the legislature should have the opportunity to redistrict itself and that this belief was central to the separation of powers doctrine. However, the issue was how to avoid an impasse and, if one occurred, how to resolve it.

Generally, the delegates felt that if the General Assembly could not agree on a redistricting map, the appointment of four non-legislators to a legislative redistricting commission would bring some objectivity to the process and facilitate communication and agreement. However, there would still be a need for a tie breaker in the event the commission phase still resulted in impasse. Hence the large majority of delegates felt that a winner take all tie-breaker process would not only

ensure some finality to the process, but also would sufficiently incentivize the General Assembly to reach a consensus to avoid the winner take-all effects of the tie-breaker. The Constitution of the State of Illinois was adopted by popular vote at the 1970 general election.

The first redistricting under the new constitution was in 1971. The 1971 General Assembly was almost equally divided between the two major parties. The House had a slight Republican majority, and the Senate was evenly divided between the parties. The General Assembly could not agree to a redistricting map, and the task was turned over to the Legislative Redistricting Commission, appointed by the legislative leaders. With bipartisan cooperation, the Commission managed to draw new districts that provided for legislative representation for the next ten years.

The General Assembly next faced the redistricting task in 1981, following the 1980 census. Complicating the task was adoption of the "cut back" constitutional amendment in 1980. This amendment reduced the size of the House by one third, and provided for single member districts, which eliminated the unique Illinois method of electing representatives by cumulative voting.

Leadership in the 1981 General Assembly was divided, with the Democrats having a majority in the Senate, and the Republicans a majority in the House. Not unexpectedly, the legislature did not agree on a new map, and the legislative leaders appointed a Legislative Redistricting Commission as provided in the 1970 Constitution. Because the bipartisan Commission could not agree on a new map, the "tie breaker" provision of the new constitution was utilized for the first time.

As provided by the Constitution the Supreme Court submitted the name of former Governor Richard Ogilvie, a Republican, and former Governor Samuel Shapiro, a Democrat. In a public ceremony, Secretary of State Jim

Edgar, a Republican, using an Abraham Lincoln hat, drew the name of Democrat Shapiro as the ninth member of the Commission.

With a Democratic majority, the Democrats drew a map favorable to themselves. The map was challenged in federal and state courts. The Illinois Supreme Court upheld the map with one modification. Blacks, Hispanics and Republicans challenged the map in federal court, and that court ordered changes made in some minority districts. The 1981 map was the law of the state until 1991.

Democrats controlled both houses of the General Assembly in 1991. The legislature approved a redistricting map and sent it to the Governor. Republican Jim Edgar vetoed the map, and the legislature was unable to override the veto. Again, a bipartisan Redistricting Commission was appointed by the legislative leaders. The Commission became deadlocked, and the "tie breaker" provision was activated again.

Before selecting the name, Secretary Ryan made it clear he found the process distasteful. "The people of Illinois deserve better, and they deserve representation that is not a lottery. The whole point of the legislative process is to achieve compromise. The legislature cannot just flip a coin or draw a name every time they are forced to make a tough decision."

The Supreme Court selected the two potential "tie breakers," Albert Jourdan, chairman of the State Republican Party, and former Democratic Supreme Court Justice Daniel Ward. Secretary of State George Ryan selected the name of Jourdan out of a crystal bowl. With a Republican majority, the Redistricting Commission adopted a Republican map.

The map was challenged in the State Supreme Court. On a 4-3 party line vote, the Court issued an order that invalidated the map and remanded it to the Redistricting Commission. That Commission made some slight changes in its map and resubmitted it to the Court. This time, however, one of the

judges switched sides and voted with the minority to uphold the map. The partisan nature of the switch was spelled out in a dissent filed when the final approval was appealed. With this partisan action of the court, the 1991 redistricting was concluded.

As indicated by this very brief history of redistricting in Illinois, redistricting is one of the most partisan actions that the legislature is asked to undertake. Legislators empowered to make the decisions are intent upon producing districts that will make it easiest for them to be re-elected, for their party to gain the maximum advantage, and for incumbents in both parties to remain in office. Subject to occasional other considerations, that is usually the order of priority. Redistricting has been a collective demonstration of unvarnished self-interest in action.

It was in this context that Secretary of State George H. Ryan announced on March 3, 1992 the appointment of 29 people to a bipartisan Redistricting Process Review Commission to consider reforms in Illinois' procedures for re-mapping legislative districts every ten years. He thereby fulfilled the commitment he had made the previous September, minutes before selecting the tie-breaking ninth member of the Legislative Redistricting Commission, when he said he would create a group of experts and interested parties to examine alternatives for breaking future deadlocks on the redistricting panel.

He initially appointed;

Joseph Berrios
Ertharin Cousin
John Dailey
Rep. Lee Daniels
Samuel Gove
Paul Green
John Jackson
James Nowlan
Sen. James "Pate" Philip
Sylvia Puente
David Reed
Dennis Rendleman
Eleanor Revelle
Sen. Philip Rock

John Kornacki	Howard Ryan
Jeffrey R. Ladd	Gerald Shea
Michael Lavelle	Zack Stamp
Tracy Litsey	Joseph Tecson
Ann Lousin	Jack Van Der Slik
Rep. Michael Madigan	Daniel Ward
Pam McDonough	W. Edward Webb

Donald Zeglis

Later in the process, due to death, relocation, change in employment, or resignation, John Kornacki, Tracey Litsey, John Dailey, Sylvia Puente, David Reed, Eleanor Revelle, Daniel Ward and Don Zeglis ceased to participate on the Commission. Secretary Ryan then proceeded to appoint Sen. Emil Jones, as the minority leader of the Illinois Senate, Robert W. Blair, former speaker of the House of Representatives, and Jan Flapan, president of the League of Women Voters, as replacements.

The Commission initially attempted to obtain funding from several foundations headquartered in Chicago. None felt that this effort was within their mission or consistent with their goals and objectives. As a result the budget for this effort was drastically reduced, and the limited funding required was supplied by the Secretary of State's Office.

The Commission held a series of public meetings in Chicago, Springfield, Edwardsville, Moline, Bloomington, Carbondale and Glen-Ellyn. The meetings were held to solicit public input regarding the process and the potential for change. Members of the Commission were also provided with what some regarded as an overwhelming volume of information regarding redistricting in Illinois and other states. In addition, the Commission received testimony from several nationally recognized experts on redistricting. (*See*, "Papers of the Redistricting Process Review Commission," on file in the Office of the Secretary of State, Springfield.)

Early in its deliberations, the Commission formulated a set of criteria against which any proposal could be measured. Each proposal was evaluated on whether it:

1. Engendered Public Trust.
2. Finalized district boundaries in a timely fashion.
3. Provided for meaningful public participation.
4. Minimized partisan domination of the process.
5. Minimized the partisan windfall effect.
6. Avoided obstructing the business of the Legislature.

However, in trying to construct a solution that would meet the criteria and which would be workable, the Commission spent a great deal of time attempting to identify as a tie-breaker an individual(s) or institution(s) that was not only perceived to be independent, non-partisan and objective, but indeed embodied those characteristics. It became painstakingly clear that no such person, active or retired, or institution was so perceived. In no small part the perception stems from the fact that Illinois is very evenly divided—Republican and Democrat. It is a very partisan state. In fact it is considered a bell-weather state in national elections. Its bruising and sophisticated political system has produced a disproportionate share of Congressional leaders, including the current Speaker of the U.S. House of Representatives. Names like Dirksen, Cannon and Rainey are numbered among historic Illinois powerhouses on the Congressional scene because of the finely honed political skills they acquired in this prairie state.

Nevertheless, as time consuming and as difficult as it was, the members of the Commission now believe they have fashioned a process that breaks deadlocks in a non-partisan, fair and timely manner and which will avoid the expenditure of large sums of money for attorney fees and redistricting

consultants. The solution will also serve to avoid the late certification of ballots, which must await final approval of legislative boundaries.

III. Alternative Proposals Considered by the Commission

In response to the charge given the Commission by the Secretary of State, eight proposals, and variants thereto, were proposed by and considered by members of the Commission. These proposals are summarized briefly here, so the reader can appreciate the wide range of possibilities considered.

1. Rather than add a tie-breaking member to the Redistricting Commission, as required by the Illinois Constitution of 1970, this proposal would remove one of the members of the by random selection. The party with the majority on the would then choose to draw the map for one of the legislative chambers, while the party in the minority would draw the map for the other chamber.

2. This proposal would advance the deadlines for the General Assembly action on redistricting by several months to accommodate election officials. The current procedure of selecting a ninth member of the Redistricting Commission would be continued; however, each of the two names submitted by the Supreme Court would participate in the redistricting process. The first person whose name was drawn by the Secretary of State would then in turn draw out the name of one of the two chambers, and that person would serve as the ninth member of the Redistricting Commission for purposes of redistricting that chamber. The other person submitted by the Supreme Court would then serve as the ninth member of the Redistricting Commission for purposes of redistricting the other chamber.

3. Membership on the Redistricting Commission would be expanded from the present eight to sixteen. The proposal

prohibits membership by members of the General Assembly or persons who would be candidates for the legislature in the first election following adoption of the redistricting.

4. The tie breaking ninth member of the Redistricting Commission would be elected at the general election preceding redistricting. This would put legislators on notice as to which party would control the redistricting process, should the General Assembly fail to redistrict itself.

5. This proposal comprises a number of general recommendations for overhauling the existing procedure. The most dramatic of these suggestions would transfer responsibility for redistricting to a body independent of the General Assembly, such as the Legislative Reference Bureau or the State Board of Elections, and that redistricting would be accomplished by computer, based upon objective, nonpartisan criteria.

6. This proposal would incorporate some form of the tie-breaking provisions found in Hawaii, New Jersey and Pennsylvania, where a majority of the redistricting commission itself selects the tie-breaking member.

7. In this proposal, the four legislative leaders (President of the Senate and Minority Leader; Speaker of the House and Minority Leader) would constitute the Commission on Redistricting and be responsible in the first instance for redistricting. If the Commission fails to submit a final redistricting map to the Secretary of State by July 1st signed by at least three of the four members, then one of the members, chosen by lot, shall be removed from the Redistricting Commission. The three remaining members would have until August lst to agree on redistricting maps, signed by at least two members of the Redistricting Commission.

8. The eighth and final proposal is the one ultimately recommended by this Commission, and it is discussed and supported in detail in the section that follows. The proposal

incorporates and refines several of the general recommendations made in proposal Number 5 above, to wit; If the General Assembly proves unable to redistrict itself, then the responsibility is delegated to the Illinois State Board of Elections. The State Board of Election shall have responsibility for selecting specifications for a computer program that shall draw redistricting maps consistent with State and Federal law.

This proposal was selected by the Commission in large part because of the public aversion to any form of lottery selection of a tie-breaking commission member. Further, the bipartisan membership of the Commission believes that—even in a political system as highly partisan as that in Illinois—it is possible, indeed incumbent upon elected policymakers, to design a procedure that is neutral and fair to all its citizens.

IV. Issues and Recommendations

The Commission's approach was to identify any issues of concern [1] in Article IV of the Constitution and, wherever a problem was identified, search for solutions and, where possible, advance a recommendation. This was done in each instance but one. That exception involves judicial review by the Illinois Supreme Court. Under the existing Constitution, the Supreme Court has exclusive and original jurisdiction over conflicts involving a redistricting plan. Nevertheless, some problems are created by judicial review. Therefore, limiting or eliminating court jurisdiction was considered. However, there was no consensus on the Commission to change the role of the Supreme Court.

The recommendations are based upon certain factual and legal premises which follow. The Republican and Democratic

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[1] Where the Commission members of this report observe a consensus opinion on any point, it is intended only to reflect the plurality of those opining. Minority opinions are not reflected.

parties are equally competitive on a statewide basis.[2] With a fair map, control of either chamber of the General Assembly is dependent upon superiority in traditional components of political success. In most elections, less than 20% of the seats in either chamber are seriously contested. Thus, while agreement between the parties could be reached in 80% of the districts, the parties have been unable in the past two redistricting cycles to reach overall agreement. Thus, the last two plans were drawn by the Redistricting Commission after utilizing the tie-breaker provision. These plans were later scrutinized by the courts.[3]

The systemic failure of existing redistricting concepts embodied in Article IV are twofold: (a) obstacles to success at the legislative level; and (b) displeasure with the safety net.

The obstacles to implementation of a General Assembly passed map are also multiple in category. At present, a map must not only be approved in both chambers, it must satisfy the complex political equation resulting from "nesting." This requires satisfying not only both parties within that chamber, but the concurrence of members of both parties of the opposite chamber. The Governor must then sign the

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[2] In statewide elections (i.e. state constitutional officers and United States Senators) since 1968, Republicans have won thirty-three offices and Democrats thirty.

[3] In 1981, the redistricting plan was passed only after the "tie-breaker" was utilized. Illinois Supreme Court later held one of the Representative Districts unconstitutional due to a population deviation. *Schrage v. State Bd. of Elections*, 88 Ill.2d 87, 430 N.E.2d 483, 491-92 (1981). Again in 1991, the "tie breaker" had to be utilized. This map was also challenged. Only after two Illinois Supreme Court decisions and over two million dollars spent was a map finally approved. *People ex rel. Burris v. Ryan*, 147 Ill.2d 770, 558 N.E.2d 1033,1035-36 (1992) *cert. denied*, 504 U.S. 973 (1992). Interestingly, from 1901 to the present, "the Illinois General Assembly has approved only one legislature redistricting map under which an election has been held. *Grivetti v. Illinois State Electoral Bd.*, 335 F.Supp. 779, 790 (N.D. Ill. 1971).

submittal. Failure to get approval from the other chamber and the Governor of a "nested" map were viewed by the Commission as significant obstacles in passing and implementing a redistricting map. Any plan (whether created by the legislature or the Commission) is then the object of scrutiny by the Attorney General and the Illinois Supreme Court.

V. Legislative Passed Maps

The Commission members felt further strain upon the process was placed by requiring that the Governor and both chambers must approve any legislative plan. Unless both chambers and the governorship are controlled by the same party, the Commission members felt the risk of failing to pass a redistricting map was great. It was felt that bipartisan support of any plan was both desirable and essential to withstand public claims (and judicial inquiry) as to political gerrymandering. However, given other obstacles, bipartisan support under the present system is unlikely. Without the constraints imposed by having the other chamber's approval and the Governor's acquiescence, well-informed views were expressed that each chamber had a good possibility of achieving a 3/5 agreement on a map governing *only* that chamber. Such a majority would require bipartisan support. However, it would not require approval of the other chamber, or the governor.

The Commission members felt a super-majority was essential to achieve the desired goal of bipartisanship Two super-majority requirements were considered: 3/5 and 2/3. Only once since the 1970 Constitution was adopted has a party achieved a 3/5 majority in either chamber—and then not in a year in which redistricting was required.[4] A 3/5 margin would require a Senate vote of 36 and a House approval of 72. A 2/3 majority would ensure greater

[4] In the eighty-seventh General Assembly, the Democrats held a majority in the House of slightly more than three-fifths.

participation of the minority party requiring a Senate vote of 40 and a House vote of 79. However, a 2/3 requirement was viewed by the Commission members as unattainable and otherwise would allow a 1/3 minority to hold a fair plan hostage.

These recommendations are not only an attempt to minimize oversight by co-equal branches but also to minimize internecine fighting between House and Senate map drawers of the respective parties. While nesting provisions requiring that each Senate District have boundaries co-terminus with two enclosed House districts do promote some efficiency for the County Clerks, it was felt such gains were outweighed by the possibilities for disorder created by superimposing the maps of each Chamber upon each other as a condition of approval. The Commission members felt that elimination of this provision would greatly increase the possibility of passage of a bipartisan map—even with the requirement of a three-fifths majority vote.

VI. Redistricting Commission Maps

The Redistricting Commission is by law initially constituted in political equality, with equal representation from each party. For that reason alone, it faces great obstacles to breaking any legislative stalemate. Without either party possessing a majority, the Redistricting Commission is called upon to do what the General Assembly" [5] (whose members it represents) could not accomplish. If unable to act its the eight person configuration, the Redistricting Commission then goes into the "tie-breaking" phase where, by random selection of

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[5] "The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly." ILL. CONST. art IV, § 3(b).

an additional member, one party gets the upper hand and draws the redistricting plan.[6] The winner of this lottery obtains political advantage which is, however, still subject to agreement between the chambers on the "nested" boundaries, scrutiny by the Attorney General and subject to the jurisdiction of the Supreme Court.[7]

The perceived unlikelihood of a Redistricting Commission drawing an acceptable map and the further inevitability that it would be drawn only after the tie-breaking spectacle unique to Illinois, were the primary bases of the Commission's recommendation for reform. This tie breaking provision has been the object of much media attack,[8] and its

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[6] "If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1." ILL. CONST. art IV, § 3(b) "No later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission." ILL. CONST. art IV, § 3(b).

[7] ILL. CONST, art III, § 3(b). "After all of the deliberations and expense to the taxpayers, over $2 million, we do not find that a lottery or a flip of a coin is in the best interest of anyone except the part which has won the toss." *People ex rel Burns v. Ryan*, 147 ILL>2d 270, 588 N.E.2d 1033, 1038-39 (1992), *cert. denied*, 504 U.S. 973 (1992) "It appears to the Court that involvement in the apportionment of districts at the behest of one political party (and obviously to the detriment of another political party) would undoubtedly involve the Court's involvement in future requests to examine district lines by a second, a third, or perhaps numerous political parties. It is not for the Court to decide which political party should be in power during any given election year." *Smith v. Boyle*, 959 F.Supp. 982, 989 (C.D. Ill. 1997), *aff'd as modified*, 144 F.3d 1060 (7th Cir. 1998).

[8] Quirk, *Avoiding government by lottery*), CHI. TRIB., March 19, 1992; Pearson, *Ryan looks for better way to redistrict state*, CHI. TRIB., March 3,1992; *New rules for Illinois' Mapmapers*, CHI. TRIB., March 3, 1992: Grady, *Must remaps be just a matter of simple luck?*, CHI. TRIB., January 19, 199.

constitutionality has even been placed in question by the Supreme Court.[9] The Commission members recognized that any solution to the elimination of the tie-breaking provision involved eliminating the Redistricting Commission which needs the tie-breaker to act. The Redistricting Commission concept, while well-intentioned, has not broken legislative impasse, and the political dynamics seem to indicate that, absent constitutional change, history will indeed repeat itself with future maps again drawn by winners of a lottery.

VII. Recommendations—Overview

It was the Commission's initial objective to create an environment which would encourage passage of a plan by each chamber for that chamber only. In the event either chamber is unable to pass a legislative plan, it was the consensus that a neutral computer-governed format should be substituted for the Redistricting Commission. This would take advantage of technical computer capacities not available to the framers of the 1970 Constitution. The format advanced by this Commission would give incentive to the General Assembly to act and eliminate the foremost obstacles to success. While the basic computer tools have been utilized, no State has gone as far as does this recommendation.[10]

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[9] *People ex rel. Burns v. Ryan*, 147 Ill.2d 270, 558 N.E.2d 1033, 1043-44 (1992), *cert. denied*, 504 U.S. 973 (1992), (Justice Bilandic dissenting) ("the tie-breaking procedure set forth in article IV, section 3(b), of the Illinois constitution of 1970 violates the due process clause of the fourteenth amendment to the United States Constitution. Any redistricting plan produced as result of the tie-breaking procedure is therefore unconstitutional and invalid.")

[10] *See* Iowa Code §42.1 *et seq* (1998). On 1/21/97 Nebraska State Senator Curt Bromm introduced Legislative Bill 607, which provides specific, scientific standards and guidelines for a designated, disinterested third party and committee to use when drawing legislative and

Upon the recommendation, each chamber of the General Assembly would have until June 15 to pass a map for its own chamber. Such vote would be by a 3/5 vote, as opposed to the simple majority, now required. This would require bipartisan support. On the other hand, approval of the other chamber, satisfaction of nesting provisions and approval by the Governor (viewed as non-leislative involvement) would be eliminated.

Under the present system, failure of the General Assembly to pass a redistricting plan places the matter before the Redistricting Commission. Under the format envisioned by the Commission members, the Redistricting Commission's function as a safety net would be filled by the State Board of Elections. However, its functions would be ministerial only. The only function of the State Board would be to approve neutral criteria for a computer program prior to April 15th. If either chamber of the General Assembly is unable to approve a plan with a 3/5 vote, then the State Board would run the program generating the legislative map which would be applicable to the chamber(s) unable to agree on a map. Thus, each chamber has to engage in bipartisan creation of a map for itself or become subject to a map created by an impartial computer program. However, because the computer program has a randomly selected point of beginning, the map it would generate would be unknown. Thus, the General Assembly gets to choose between the map it knows and the map it

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congressional district boundaries. L.B. 607, 95th Leg., lst Reg. Sess. (Neb. 1997). On May 18, 1998 the 1998 Regular Session adjourned without carrying over L.B. 607. L.B. 607, 95th Leg., 2d Reg. Sess. (Neb. 1997).

On May 14, 1997 Texas State Senator Wentworth introduced S.J. Res. 41 and S. B. 1564 which proposed a constitutional amendment to create the Texas Redistricting Commission to establish legislative and congressional districts and to review the constitutional redistricting provisions. S. J. Res. 41 and S. B. 1564, 1st Reg. Sess. (Tex. 1997). The Regular Session adjourned on August 6, 1997 with no carryover.

doesn't know. The members of the Commission believe this may constitute a "tie breaker" which will prove to be a real incentive for bipartisan agreement.

To develop such computer software would require some pioneering, but it was the consensus of the Commission that a computer-driven decision tree can be developed. That decisional tree (reflected in lines 164-175) would provide a protocol for the computer to randomly begin and then draw what will be a large number of (a) contiguous districts; (b) containing equal population; (c) subject to compactness criteria; (d) minimizing City/County splits; (e) ensuring a fair reflection of minority voting strength; and (f) mathematical tie-breaking criteria, so as to select a single plan.

VIII. Recommended Computer Criteria

The Commission members felt that if the Redistricting Commission is replaced by computer randomness, that it must reflect Illinois traditional criteria, yet be sufficiently flexible to accommodate changes in interpretive law. This decisional tree follows that format. The principal tiers of that decisional tree follow;

**"CONTIGUITY" [11] This is the *sine qua non* of legislative representation of a geographic area. It merely requires that all territory touch some property within that same district. it is required in a legislative map whether generated by man or machine.

- **"SUBSTANTIAL EQUALITY OF POPULATION" [12] It is envisioned that any computer-generated map would

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[11] "Legislative and Representative Districts shall be contiguous. ILL. CONST. art IV, § 3(a).

[12] Legislative and Representative Districts shall be substantially equal in population. ILL. CONST. ART. iv, § 3(A). Variances from a pure population standard in state redistricting may be justified by such state policy considerations as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the

be programmed to start randomly at a location and move randomly to assimilate contiguous geography until one district (whether House or Senate) with ideal population is drawn. At this level of the decision tree, the computer would be able to generate a large number of plans having equally populated districts,

**"COMPACTNESS" [13] The decision tree would then require that any overall map not having compactness criteria within certain limits be excluded. Compactness is highly rated by the Illinois Supreme Court in analyzing plans. In Schrage, compactness formed the prime element in the Courts decision. In the compactness of the Redistricing Commission map, *Burris* was viewed by the Court members with scrutiny. There is no single measure of compactness. Indeed, some 20 are reported in the literature. Three have emerged as the most often utilized. There is software for all three, and the Supreme Court analyzed data generated by those very three in judicially evaluating the last map.

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recognition of natural or historical boundaries. *Reynolds v. Sims*, 377 U.S. 533, 579 (1964). *See also People ex rel. Burris v. Ryan*, 147 Ill. ld 270, 588 N.E. 2d 1033, 1035 (1992), *cert. denied*, 504 U.S. 973 (1992) (1991 redistricting plan viewed by Illinois Supreme Court in light of whether it met requirement of substantially equal population").

[13] "Legislative and Representative Districts shall be compact. ILL. CONST. art. IV, § 3(a); *People ex rel Burris v. Ryan*, 147 Ill.2d 270, 588 N.E. 2d 033,1035-36 (1992), *cert. denied*, 504 U.S. 973 (1992) (majority opinion) (maps must satisfy compactness requirements); *Id.*, at 1038, (Justice Heiple concurrence states 1991 map met compactness standard even though drawn with unusual shapes); but see *Id.* at 1040-41, (Justice Clark's dissent stating that 1991 map does not meet compactness standard). *Schrage v. State Bd of Elections*, 88 Ill. 2d 87, 430 N.E. 2d 483, 485-89 (1981).

**"MINIMIZATION OF THE NUMBER OF DISTRICTS THAT CROSS COUNTRY OR MUNICIPAL BOUNDARIES" [14]—in its most recent pronouncements on legislative redistricting, the United States Supreme Court approved the concept of joining conventional communities of interest. it was the sense of the Commission members that because communities of interest are defined solely by geography, that this "wild card" element in the map drawing hand is best defined by quantifying county and municipality splits. Once accomplished, there could be a narrowing process of maps of contiguous geography, equality of population and within a range of acceptable compactness criteria by only selecting a preordained range of maps involving minimal county/municipality splits.

**"A FAIR REFLECTION OF MINORITY VOTING STRENGTH" [15]—in the last redistricting cycle,

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[14] While not constitutionally mandated, this state redistricting principle has often been recognized as a legitimate interest by the United States and Illinois Supreme Courts. *Miller v. Johnson*, 515 U. S. 900, 901 (1995); *Swann v. Adams*, 440, 444 (1967); *Schrage v. State Bd. of Elections*, 88 Ill.2d 87, 430 N.E.2d 483, 488-89 (1981).

[15] In *Shaw v. Reno*, 509 U.S. 630, 657-58 (1993), the Supreme Court allowed a challenge to a redistricting plan intended to benefit a racial minority. In holding the plan unconstitutional, the Court stated that:

> Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin.

Id. at 657.

Later, the Supreme Court, while recognizing that reapportionment is primarily a state function, again applied a strict scrutiny analysis to a racial gerrymander intended to benefit a racial minority. *Miller v. Johnson*, 515 U.S. 900 (1995). In order to show an impermissible racial gerrymander, a plaintiff must show "that race was the predominant factor motivating the legislature's decision to place a significant number of votes within or without a particular district. To make this showing, a plaintiff

compliance with the Voters Rights Act resulted in an attempt to generate a maximum number of majority minority districts, possessing minority super-majorities of between 50-65%.

A professor at the University of Baltimore has conducted research to generate the *maximum* number of such majority/minority districts with any given population data. This work, has as its object drawing the maximum number of districts—many of which would not satisfy the compactness, equal population and municipality split limitations of the envisioned format. A known quantitative objective greatly eases satisfaction of the Voting Rights Act and concomitant map drawing problems associated with attempts at maximizing the number of minority districts. As can be seen, this proposal anticipates multiple computer-driven steps to achieve a finite number of plans, all of which would achieve the aforementioned criteria. Selection of the plan actually implemented could be done by having the computer draw further tie-breaking criteria.

This recommendation contemplates the possibility that one chamber of the General Assembly might be unable to obtain the necessary 3/5 vote but desires to modify the computer program generated by the Election Commission. It is expected that such changes would be technical, nonpolitical and involve adjusting relationships between the various criteria. For instance, relaxing population deviations to

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must prove that the legislature subordinated traditional race neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id.* at 916. Where race-related classifications are the basis for a particular map, and are not subordinated to race, a claim of impermissible racial gerrymandering can be defeated. *Id.* at 916. Even compliance with federal antidiscrimination laws cannot immunize racial gerrymandering.

increase compactness ratios or minority districts. Such substituted programs would retain prohibitions against political intervention.

Because any computer drafted map would be free from political influence and because *intent* to politically discriminate is essential to maintain a cause of action, it is expected that any computer-assisted plan would not only be politically fair, it would be free of judicial review possibilities.[16]

The Commission agreed that two other changes should be recommended for incorporation in any constitutional amendment. First the size of the House of Representatives should be increased by one member to avoid the possibility of an evenly divided legislative body unable to organize itself.

Secondly, the Commission members believed that while original and exclusive jurisdiction should remain in the Supreme Court, it should not be limited to application by the Attorney General. It is therefore recommended that that provision be deleted.

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[16] Under *Davis v. Bandemer*, 478 U.S. 109, 126, fn 11 (1986), a showing of discriminatory intent is a prerequisite to a political gerrymandering claim. *See also Smith v, Boyle*, 144 F.3d 1060, 1065-66 (7th Cir. 1998).

IX. Proposed Constitutional Amendment

91ST GENERAL ASSEMBLY

State of Illinois

1999 and 2000

HOUSE JOINT RESOLUTION

CONSTITUTIONAL AMENDMENT

INTRODUCED _____, BY

SYNOPSES AS INTRODUCED:

ILCON Art, IV, Sec. 1
ILCON Art. IV, Sec. 2
ILCON Art. IV, Sec, 3
ILCON Art, XIV, Sec. 1

Proposes to amend the Legislature Article of the Illinois Constitution. Provides that a Representative District (for election of a member of the House of Representatives) need not be entirely within a single Senatorial District (for election of a member of the Senate, now referred to as a Legislative District). Provides that (i) the Senate redistricts Senatorial Districts by resolution, adopted by a record vote of three-fifths of the members elected and (ii) the House of Representatives redistricts Representative Districts by resolution adopted by a record vote of three-fifths of the members elected (now, redistricting is by law). Eliminates the Legislative Redistricting Commission. Provides instead that if a Senatorial or Representative redistricting plan is not adopted by June 15 of the year following a federal decennial census year, then the State Board of Elections shall produce a redistricting plan using a computer program. Requires the State Board of Elections to designate its computer program by April 15. The computer program designated by the State Board of Elections must disregard specified data and must consider certain prioritized factors; the computer program

shall otherwise produce districts in a random manner. Authorizes the House and Senate to designate different computer programs for their respective chambers; doing so requires adoption of a resolution by a three-fifths vote on or before June 15. Removes the requirement that actions concerning redistricting the House or Senate may be initiated only by the Attorney General. Increases the number of Representatives from 118 to 119. Proposes to amend the Constitutional Revision Article to make a change to conform nomenclature. Effective beginning with redistricting in 2001 and applies to members elected in 2002 and thereafter.

SENATE JOINT RESOLUTION

CONSTITUTIONAL AMENDMENT

RESOLVED, BY THE SENATE OF THE NINETY-FIRST GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that there shall be submitted to the electors of the State for adoption or rejection at the general election next occurring at least 6 months after the adoption of this resolution a proposition to amend Sections 1, 2, and 3 of Article IV and Section 1 of Article XIV of the Illinois Constitution as follows:

ARTICLE IV

THE LEGISLATURE

(ILCON Art. IV, Sec. 1)

SECTION 1. LEGISLATURE—POWER AND STRUCTURE

The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives elected by the electors from 59 *Senatorial* ~~legislative~~ Districts and *119* ~~118~~ Representative Districts.

(Source: Amendment adopted at general election November 4, 1980.)

(ILCON Art. IV, Sec. 2)

SECTION 2. LEGISLATIVE COMPOSITION

(a) One Senator shall be elected from each *Senatorial* ~~legislative~~ District. Immediately following each decennial redistricting, the General Assembly by law shall divide the *Senatorial* ~~legislative~~ Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years. The *Senatorial* ~~legislative~~ Districts in each group shall be distributed substantially equally over the State.

(b) ~~Each legislative District shall be divided into two Represetative Districts. In 1982 and every two years thereafter~~ One Representative shall be elected from each Representative District for a term of two years.

(c) To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent. In the general election following a redistricting, a candidate for the General Assembly may be elected from any district which contains a part of the district in which he resided at the time of the redistricting and reelected if a resident of the new district he represents for 18 months prior to reelection.

(d) Within thirty days after a vacancy occurs, it shall be filled by appointment as provided by law. If the vacancy is in a Senatorial office with more than twenty-eight months remaining in the term, the appointed Senator shall serve until the next general election, at which time a senator shall be elected to serve for the remainder of the term. If the vacancy is in a Representative office of in any other Senatorial office, the appointment shall be for the remainder of the term. An

appointee to fill a vacancy shall be a member of the same political party as the person he succeeds.

(e) No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly.

No member of the General Assembly during the term for which he was elected or appointed shall be appointed to a public office which shall have been created or the compensation for which shall have been increased by the General Assembly during that term.

(Source: Amendment adopted at general election November 4, 1980.)

(ILCON Art. IV, Sec. 3)

SECTION 3. LEGISLATIVE REDISTRICTING

(a) *Senatorial* ~~legislative~~ Districts shall be compact, contiguous and substantially equal in population. Representative Districts shall be compact, contiguous, and substantially equal in population. *A Representative District need not be entirely within a single Senatorial District.*

(b) By April 15 of the year following each Federal decennial census year, the State Board of Elections, by a record vote of a majority of the total number of members authorized by law as provided in Section 5 of Article III, shall designate a computer program for redistricting the Senate and House of Representatives that meets the requirements of this Section. The designation shall include detailed specifications of the computer program.

Any computer program designated by the State board of Elections under this Section shall embody, the following

standards and criteria, as defined by Common Law in this order of priority:

(1) contiguity;

(2) substantial equality of population;

(3) compactness,

(4) Minimization of the number of districts that cross county or municipal boundaries; and

(5) a fair reflection of minority voting strength. Any computer program designated by the State Board of Elections under this Section shall not consider the following data:

(1) resident of incumbent legislators;

(2) political affiliations of registered voters;

(3) previous election, results; and

(4) demographic information not required to be used by this Section or by the United States Constitution or federal law.

Except as specified in this Section, the computer program shall produce districts in a random manner.

The Senate, by resolution adopted by a record vote of three-fifths of the members elected, may by June 15 of that year designate a different computer program for redistricting the Senate. The House of Representatives, by a resolution adopted by a record vote of three-fifths of the members elected, may by June 15 of that year designate a different computer program for redistricting the House of Representatives.

(c) ~~(b)~~ In the year following each Federal decennial census year, *(i)* the *Senate, by resolution adopted by a record vote of three-fifths of the members elected,* ~~General Assembly by law~~ shall redistrict the *Senatorial* ~~legislative~~ Districts and *(ii)* the

House of Representatives, by resolution adopted by a record vote of three-fifths of the members elected, shall redistrict the Representative Districts. *Each adopted redistricting resolution shall be filed with the Secretary of State by the presiding officer of the house that adopted the resolution.*

(d) If a Senatorial or Representative redistricting resolution is not adopted and effective by June 15 of that year, the State Board of Elections, as soon thereafter as is practicable, shall produce a Senatorial or Representative redistricting plan, or both as the case may be, through the use of the computer program designated by the affected chamber, if it made a designation under subsection (b), or else through the use of the computer program designated by the State Board of Elections under that subsection. The State Board of Elections shall file the redistricting plan with the Secretary of State.

~~If no redistricting plan becomes effective by June 30 of that year, a legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party. The Speaker and minority leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly. The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission. Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.~~

~~If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.~~

~~Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.~~

~~Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.~~

(e) A ~~An approved~~ redistricting plan, *adopted by redistricting resolution or produced by the State Board of Elections, that is* filed with the Secretary of State shall be presumed valid, shall have the *same* force and effect *as a* ~~of~~ law, and shall be published promptly by the Secretary of State.

(f) The Supreme court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate~~, which shall be initiated in the name of the People of the State by the Attorney General~~.

(Source: Amendment adopted at general election November 4, 1980.)

ARTICLE XIV

CONSTITUTIONAL REVISION

(ILCON Art. XIV, Sec. 1)

SECTION 1. CONSTITUTIONAL CONVENTION

(a) Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a Constitutional Convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.

(b) If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.

(c) The vote on whether to call a Convention shall be on a separate ballot. A Convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.

(d) The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each *Senatorial* ~~legislative~~ District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.

(e) To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.

(f) The Convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the Convention determines, at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment. Any revision or amendments proposed by the Convention shall be published with explanations, as the Convention provides, at least one month preceding the election.

(g) The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the convention provides, if approved by a majority of those voting on the question.

(Source: Illinois Constitution.)

SCHEDULE

This Constitutional Amendment takes effect beginning with redistricting in 2001 and applies to the election of members of the General Assembly in 2002 and thereafter.